

INTERLOCAL AGREEMENT REGARDING FREIGHT CORRIDOR FUNDING

THIS INTERLOCAL AGREEMENT (this "Agreement") is entered into by and between the Port of Everett, a port district organized under the laws of the State of Washington (the "Port") and the City of Everett, a first-class charter city organized under the laws of the State of Washington (the "City"), for the purposes of formalizing agreements by and between the Port and the City regarding the construction of 41st Street to W. Marine View Drive Freight Corridor Improvements along the freight corridor including West Marine View Drive, Rucker Avenue and 41st within the city limits of the City of Everett.

RECITALS

- A. The Port of Everett has certain facilities along the waterfront area within the City limits of Everett that are served by the city's roadway network.
- B. Currently, three intersections on the corridor from the Port of Everett on West Marine View Drive, Rucker Avenue and 41st within the city limits of the City of Everett are difficult for over-dimensional freight traffic to navigate.
- C. West Marine View Drive, a principal arterial (and part of SR 529 in Everett), connects I-5 with the waterfront and serves as a primary access to the Port's Deep Water Terminal Area.
- D. The Port of Everett has written a funding commitment letter committing \$430,000 to this project that has been part of all successful state and federal grant funding applications.
- E. The proposed project to be implemented through this Agreement is the construction of transportation facilities for over-dimensional freight hauling trucks along the corridor
- F. The Port and the City desire, in this Agreement, to identify their respective responsibilities relating to the construction of the freight corridor transportation facilities.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following.

1. **Project Description.** The Port and the City, pursuant to the responsibilities as described and allocated in this Agreement intend to cooperate and undertake the construction of the following project:

41st Street to W. Marine View Drive Freight Corridor Improvements: The project constructs improvements to three major Everett intersections: W. Marine View Dr. & Pacific Ave., Pacific Ave. & Rucker Ave., and Rucker Ave. & 41st St. The project will redirect truck traffic from the Port of Everett out of the downtown core to Rucker Avenue and south to the 41st Street single point urban interchange at Interstate 5. The work will include signal improvements, expanded turn lanes with improved radii at key intersections, and sidewalk improvements to match the new street sections.

2. **Project Funding.** Funding for the construction of the Project shall be provided from the following sources:

Construction:

Surface Transportation Program Grant	\$1,207,113
Freight Mobility Strategic Investment Board	\$400,000
City of Everett funding	\$788,394
Port of Everett funding	<u>\$430,000</u>
Total	\$2,825,507

In the event that expenditures for the construction of the Project exceed funding committed from the various funding sources, the Port and the City shall agree to discuss alternative additional funding sources to complete the Project. Absent a subsequent agreement between the Port and the City as to alternative additional funding sources to fully fund the Project, the City shall be responsible for any and all construction expenditures for which the Port did not expressly agree to pay in excess of the \$430,000 funding amount specified for the Port. The City shall not be liable or responsible to the Port in the event any other agency fails to grant funds in whole or in part. The costs of the City's engineering, construction inspection, and other services provided by the City's Engineering and Construction Management Divisions on the Project are eligible to be paid from Project Funding. To the extent such costs exceed reimbursement from Project Funding, they shall be a City responsibility unless agreed otherwise by the City and the Port.

3. **Project Design.** The City shall prepare the final, detailed design engineering to City, State, and Federal Highway Administration Standards and specifications for the Project. The City shall have final design review approval.

4. **Public Bid Process.** The City shall conduct the public bid process, and award the construction contract for the Project. Upon receipt of the bids for construction of the Project from qualified contractors, the City shall consult with the Port to determine whether there are sufficient funds to construct the Project based on the bids received. In the event that there are not sufficient funds to go forward with the Project, the City shall reject all bids. The City shall also provide the Port with a copy of the bid tabulation and shall accept any Port comments regarding the bids and bidders. If sufficient Project funding is available, the formal determination as to who shall receive the bid award shall be solely that of the City. The bid package shall, using the City's usual contract documents, require the contractor to indemnify both the City and the Port as well as obtain, and maintain during the Project, necessary and appropriate insurance coverage with certificates evidencing that coverage which names both the City and the Port as additional named insureds. After the bid award, the City will provide the Port upon request with copies of both the indemnification provisions of the Contract and the certificate(s) of insurance.

5. **Construction Administration.** The City shall administer the interlocal undertaking and construction contract for the Project. All costs incurred during construction (e.g., contract testing, construction engineering, etc.) shall be reimbursed from the project funding described in Section 2 above. The City will consult with a person designated by the Port prior to directing the contractor to perform extra work, if advance consultation is practicable, will not delay the contractor, and is not required by an emergency. Where advance consultation is not practicable, will delay the contractor, or is required by an emergency, the City need not consult with the Port prior to directing the contractor to perform extra work. Prior to executing all change orders, the City will consult with the person designated by the Port. In order for it to be fully informed, the Port may have a representative attend the periodic job site meetings between the City and the contractor. Failure to consult with the Port as provided herein shall not affect the Port's obligations to reimburse the City under this Agreement, absent prejudice or damage to the Port. The Port shall designate a point of contact with whom the City should consult regarding performance of the work by the contractor, including, but not limited to, extra work, differing site conditions, change orders and claims. In the case of emergency situations, the procedures in the WSDOT LAG Manual will apply.

6. **Financial Administration.** During construction, the City will invoice the Port for its share of construction costs. The Port will make payments to the City within thirty (30) days of receipt of the invoices described above. The City shall not charge the Port for any engineering design services provided by City employees and costs of preparing grant applications that are not eligible for reimbursement by the granting agency.

7. **Grant Management.** The City has lead agency status with respect to obligating and administering all grant funding.

8. **Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the City or the Port during the term of this Agreement and for three (3) years after its termination.

9. **Property Acquisition.** There shall be no property acquired jointly as a result of this Agreement. Any property acquired during the pendency of this Agreement by either party shall belong to that respective party.

10. **No Third Party Rights.** Nothing contained herein is intended to, nor shall be construed to; create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the City or the Port, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.

11. **Notices.** All notices pursuant to this Agreement shall be given in writing and delivered by U.S. mail or delivered in person to the following:

Port of Everett

Attn: John Klekotka, P.E.
Director of Engineering and Planning
P.O. Box 538
Everett, WA 98206

City of Everett

Attn: Dave Davis, P.E.
Public Works Director
3200 Cedar Street
Everett, WA 98201

12. **Duration.** This Agreement shall be in force from the date the parties execute the same and it shall remain in force until all projects described in Section 1, above have been completed, inspected and the required post-project completion activities have been concluded.

13. **Complete Agreement.** This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.


14. **Amendment.** No amendment to this Agreement will be effective unless in writing and signed by the Mayor of the City and by the authorized representative of the Port.

15. **Waiver.** No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

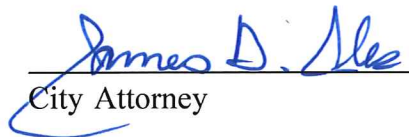
16. **Agreement Filing.** Upon execution and prior to its entry into force, the Agreement shall be posted and available, listed by subject, on the respective websites of both the City and the Port.

WHEREFORE, the Port of Everett and the City of Everett have executed this Agreement on the dates set forth below.


CITY OF EVERETT


By: Ray Stephanson
Its: Mayor
Dated: 3/12/2015


Approved As To Form:


City Attorney

Attest:


City Clerk

PORT OF EVERETT


By: Les Reardanz
Its: CEO/Executive Director
Dated: 2/10/15

Approved As To Form:


Port Attorney

